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Supreme Court, U.S.

FILED

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CLERK

No.

Term, 1986

IN THE SUPREME COURT OF THE UNITED STATES

JEAN MARIE MINNICH,  
Appellee

vs.

GREGORY L. RIVERA,  
Appellant

On Appeal from the Supreme Court of  
Pennsylvania

Jurisdictional Statement

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96/22

## TABLE OF CONTENTS

	<u>Page</u>
Question Presented	2
Opinions Below	2
Jurisdiction	3
Statute and Constitutional Provision Involved	3
Statement of the Case	4
Federal Questions are Substantial	6
Conclusion	15

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Addington v. Texas, 441 U.S. 418 (1979)	9
Corra v. Coll, 305 Pa. Super. 179, 459 A.2d 480 (1982)	9
Lassiter v. Department of Social Services, 452 U.S. 18 (1981)	7
Little v. Streater, 452 U.S. 1 (1981)	8, 10, 12, 14
Mathews v. Eldridge, 424 U.S. 319 (1976)	11
Mills v. Habluetzel, 456 U.S. 91 (1982)	13
Santosky v. Kramer, 455 U.S. 745 (1982)	8, 9, 11, 12, 13, 14, 15
Stanley v. Illinois, 405 U.S. 645 (1972)	7

Statutes

18 Pa. C.S. §4324	10
20 P.S. §§2107(d), 2514(8), 3538, and 6114(5)	11
The Pennsylvania Support Law, 42 Pa. C.S. §6704(d) (formerly Section 6704(g))	2, 4, 6

77 P.S. §562	11
Pa.R.Civ.P. 1910.22	10

IN THE SUPREME COURT OF THE UNITED STATES

Term, 1986

No.

JEAN MARIE MINNICH,  
Appellee

vs.

GREGORY L. RIVERA,  
Appellant

APPEAL FROM THE SUPREME COURT OF  
PENNSYLVANIA

TO THE HONORABLE, THE CHIEF JUSTICE AND  
ASSOCIATE JUSTICES OF THE SUPREME COURT  
OF THE UNITED STATES:

Gregory L. Rivera, Appellant herein,  
appeals from the judgment of the  
Supreme Court of Pennsylvania entered in  
the above titled case on March 21, 1986  
and hereby files a jurisdictional  
statement in support thereof. A time  
stamped copy of the Notice of Appeal is  
attached hereto as Appendix "A".



Question Presented

Does a state statute permitting issues in a paternity action to be determined only by a preponderance of the evidence violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

Opinions Below

The Court of Common Pleas of Lancaster County, Pennsylvania issued an order and opinion on October 19, 1984, finding The Pennsylvania Support Law, 42 Pa.C.S. §6704(d) (formerly Section 6704(g)), to be violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, by providing that in paternity cases "The burden of proof shall be by a preponderance of the evidence." Petitioner was granted a new trial. This Opinion

is reported at 69 Lancaster Law Review 329 and a copy is attached hereto as Appendix "B".

Upon direct appeal, the Supreme Court of Pennsylvania entered an Order with Opinion finding the statute to be constitutional. The lower court's grant of a new trial was reversed. This opinion is reported at \_\_\_\_ Pa. \_\_\_\_, 506 A.2d 879 (1986), and a copy is attached hereto as Appendix "C".

Jurisdiction

The Order of the Supreme Court of Pennsylvania was entered March 21, 1986. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(2).

Statute and Constitutional  
Provision Involved

"Where the paternity of a child born out of wedlock is disputed, the determination of

paternity shall be made by the court without a jury unless either party demands trial by jury. The trial, whether or not a trial by jury is demanded, shall be a civil trial and there shall be no right to a criminal trial on the issue of paternity. The burden of proof shall be by a preponderance of the evidence." 42 Pa.C.S. Section 6704(d).

"[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ." Fourteenth Amendment, Constitution of the United States.

#### Statement of the Case

Petitioner is the defendant in a child support case commenced June 17, 1983, by Jean Marie Minnich. Defendant denied paternity and trial was held before a jury on April 24, 1984. On April 13, 1984, Defendant filed a petition asking the court to declare that the burden of proof set by Pennsylvania statute in paternity actions violated Defendant's Due Process rights under the federal

Constitution. A copy of the Petition is attached hereto as Appendix "D."

The court issued a Rule against Plaintiff to show cause why the burden of proof should not be set at proof by clear and convincing evidence.

Plaintiff filed an answer in opposition to the Rule. Trial court then reserved its ruling on the burden of proof issue. At the close of testimony, Defendant's petition was denied. The jury found in favor of Plaintiff.

Defendant filed a motion for new trial alleging, in part, that it was error for the court to have denied Defendant's petition seeking a declaration that the burden of proof by a preponderance of the evidence violated his Due Process rights under the federal Constitution. A

copy of the Motion for New Trial is attached hereto as Appendix "E".

On October 19, 1984 Defendant's motion for a new trial was granted on the ground that 42 Pa. C.S. § 6704(d) violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, because the constitutional provision requires that the burden of proof at a paternity trial be at least proof by clear and convincing evidence. As the Pennsylvania statute sets a lower burden of proof, it was found to be unconstitutional.

Federal Questions Are Substantial

The Supreme Court of Pennsylvania ruled here that a portion of the Pennsylvania Judicial Code, 42 Pa.C.S. §6704(d) (Supp. 1985), providing that in a paternity trial the "burden of proof shall be a preponderance of the

evidence," does not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

The United States Supreme Court has recognized the substantial constitutional protection accorded familial bonds.

"The private interests implicated here are substantial. Apart from the putative father's pecuniary interest in avoiding a substantial support obligation and liberty interests threatened by the possible sanctions for noncompliance, at issue is the creation of a parent-child relationship. This Court frequently has stressed the importance of familial bonds, whether or not legitimized by marriage, and accorded them constitutional protection. See Stanley v. Illinois, 405 U.S. 645, 651-652, 31 L.Ed. 2d 551, 92 S.Ct. 1208 (1972). Just as the termination of such bonds demands procedural fairness, see Lassiter v. Department of Social Services, 452 U.S. 18, 68 L.Ed. 2d 640, 101 S.Ct. 2153 (1981), so too does their imposition. Through the judicial process, the State properly endeavors to



identify the father of a child born out of wedlock and to make him responsible for the child's maintenance. Obviously, both the child and the defendant in a paternity action have a compelling interest in the accuracy of such a determination." Little v. Streater, 452 U.S. 1, 13, 68 L.Ed.2d 627, 101 S.Ct. 2202 (1981).

The instant case involves the involuntary creation of a parent-child relationship.

The issue in Santosky v. Kramer, 455 U.S. 745, 71 L.Ed.2d 599, 102 S.Ct. 1388 (1982), was the burden of proof where parental rights were to be terminated. Mr. Justice Blackmun, speaking for the Court, noted "this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment." Id., 455 U.S. at 753.

States may set burdens of proof, but only within the requirements of Due Process.

"The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'" Addington v. Texas, 441 U.S. 418, 423, 60 L.Ed.2d 323, 99 S.Ct. 1804 (1979).

A constitutional deficiency in a burden of proof cannot be remedied by other procedural rights, such as counsel or blood tests. Santosky v. Kramer, supra, 455 U.S. at 757.

In a paternity action in Pennsylvania, the plaintiff is represented by the District Attorney, 42 Pa.C.S. §6711. Counsel is also provided to indigent defendants. Corra v. Coll, 305 Pa. Super. 179,

459 A.2d 480 (1982). Substantial federal aid is made available to the states to pursue claims for child support on behalf of mother and child. See Little v. Streater, supra, 452 U.S. at 15. Beyond counsel and blood tests, however, there is no funding mechanism to protect the putative father's familial and liberty interests.

The impact of the paternity trial is both permanent and substantial. A determination of paternity is final and may not be relitigated. Upon a finding of paternity and the entry of a support order, if the defendant willfully fails to comply, he may face imprisonment. 18 Pa.C.S. §4324. His wages, salary or other earnings may be attached. Pa.R.Civ.P. 1910.22.

If the child was born out of wedlock, a determination of paternity may give the child rights to the defendant's estate, 20 P.S. §§2107(d), 2514(8), 3538, and 6114(5), and to his Workmen's Compensation benefits, 77 P.S. §562.

The involuntary creation of a parent-child relationship is no less important in constitutional terms than the involuntary termination thereof.

This case presents the mirror image of Santosky v. Kramer, supra. Santosky v. Kramer examined the three factors in Mathews v. Eldridge, 424 U.S. 319, 47 L.Ed.2d 18, 96 S.Ct. 893 (1976): "the private interests affected by the proceeding; the risk of error created by the State's chosen procedure; and the countervailing

governmental interest supporting use of the challenged procedure."

Santosky, 455 U.S. at 754.

Santosky had been brought by the state of New York against the parents of a child. In our case, the Plaintiff is the mother, backed by the resources of the state. This Court noted in Little v. Streater, supra, 452 U.S. at 13, that the state is in fact standing behind the plaintiff in a paternity action.

Regarding the first of the three factors, Mr. Justice Blackmun specifically found the private interest in parental rights termination cases to be "commanding." Santosky, supra, 455 U.S. at 758.

Second, Mr. Justice Blackmun found a substantial risk of erroneous results from the use of the

preponderance standard. Id. Because of the resources of the state, arrayed on behalf of one party, and because of the kind of evidence involved, the evidence as to involuntary termination is "unusually open to the subjective values of the judge." Santosky, supra, 455 U.S. at 762.

There is a similar substantial risk of erroneous decision making under the Pennsylvania statute. The resources of the state are again arrayed on behalf of the Plaintiff. The nature of the evidence gives rise to a substantial risk of erroneous decision making. As to blood tests, "the proper evidentiary weight to be given [blood tests] is still a matter of academic dispute." Mills v. Habluetzel, 456 U.S. 91, 98 n.4, 71

L.Ed.2d 770, 102 S.Ct. 1549 (1982).

As to the conventional evidence, in Little v. Streater, supra, Mr. Chief Justice Burger cited with approval an earlier opinion of Mr. Justice Brennan, while he was a member of the New Jersey Superior Court:

"[I]n the field of contested paternity . . . the truth is so often obscured because social pressures create a conspiracy of silence or, worse, induce deliberate falsity." Little v. Streater, supra, 452 U.S. at 8.

As to the third Mathews factor, the governmental interest in use of the challenged procedure, Santosky v. Kramer notes that the government only has an interest in a correct determination. "[A] stricter standard of proof would reduce factual error without imposing substantial fiscal burdens upon the State." Santosky, supra, 455 U.S. at 76. In our case,

although it has provided substantial resources to the child and the mother to establish paternity, the state still has an interest only in a correct determination. As imposition of a higher standard of proof would impose no additional financial or administrative burden, the state has no legitimate ground to oppose a higher burden of proof.

#### Conclusion

The result in Santosky v. Kramer was that parental rights could no longer be terminated, except by clear and convincing evidence. There is no constitutionally significant difference between the involuntary termination and the involuntary creation of a parental-child relationship. Therefore, it is submitted that a substantial federal



question exists in this case which  
should be considered by this Court.

Respectfully submitted,

*William Watt Campbell*

William Watt Campbell  
James R. Adams  
Counsel for Appellant

IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

JEAN MARIE MINNICH, : No. 161 E.D.  
Appellant :  
:

vs. :  
:

GREGORY L. RIVERA, :  
Appellee : Appeal Docket  
: 1984

NOTICE OF APPEAL TO THE SUPREME COURT  
OF THE UNITED STATES

Notice is hereby given that Gregory  
L. Rivera, the Appellee above-named,  
hereby appeals to the Supreme Court of  
the United States from the final  
judgment of the Supreme Court of  
Pennsylvania reversing the Order of the  
Court of Common Pleas of Lancaster  
County entered in this proceeding on  
March 21, 1986.

This appeal is taken pursuant to  
Title 28, United States Code, Section

Appendix "A"

1257, subparagraph (2).

WILLIAM WATT CAMPBELL  
Attorney for Appellee  
53 North Duke Street  
Suite 305  
Lancaster, PA 17602

DATE: April 17, 1986

CERTIFICATE OF SERVICE

I, William Watt Campbell, a member of the Bar of the Supreme Court of the United States and counsel of record for Gregory L. Rivera, Appellee herein, hereby certify that on April 17, 1986, pursuant to Rule 10.4 and 28.5, Rules of the Supreme Court, I served a copy of the foregoing Notice of Appeal on each of the parties required to be served herein, as follows:

On April 17, 1986 I served Jean Marie Minnich, the Appellant herein, by mailing the copy in a duly addressed envelope, with first class postage prepaid, to Mary L. Barton, counsel of record for said Jean Marie Minnich at her office at Office of the District Attorney, 50 North Duke Street,

Lancaster, PA 17602.

All parties required to be served  
have been served.

WILLIAM WATT CAMPBELL

Subscribed and sworn to  
before me this 17th day  
of April, 1986.

NOTARY PUBLIC

SANDRA K. GRAVER, Notary Public  
Quarryville, Lancaster Co., Pa.  
My Commission Expires March 2, 1987

IN THE COURT OF COMMON PLEAS OF  
LANCASTER COUNTY, PENNSYLVANIA  
DOMESTIC RELATIONS DIVISION

JEAN MARIE MINNICH :  
: No. 1435 of 1983  
vs. :  
: Paternity  
GREGORY L. RIVERA :  
BEFORE MUELLER, J., HUMMER, J. and  
PEREZOUS, J.

O P I N I O N

BY MUELLER, J.

Presently before the Court is the  
motion for new trial filed by Defendant,  
Gregory L. Rivera.

On June 17, 1983, Plaintiff, Jean  
Marie Minnich, filed a Complaint seeking  
support for Cory Michael Minnich from  
Defendant, Gregory L. Rivera, the  
alleged father of her son. Defendant

Appendix "B"

denied paternity, and a trial was held before a jury on April 24, 1984. The jury found in favor of Plaintiff and determined that Defendant is the father of Cory Michael Minnich. Post-trial motions were filed on May 3, 1984. Briefs having been filed by both parties and oral argument having been heard by the Court en banc on September 26, 1984, these motions are properly before the Court for disposition.<sup>1</sup>

During the trial, Plaintiff claimed that she had sexual relations with Defendant on two or three occasions, but

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<sup>1</sup> Defendant's attorney gave notice to the Attorney General of Pennsylvania pursuant to Pa. R.C.P. 235, and no appearance was entered by the Attorney General. See: Letter

the testimony described only one incident which occurred in the late summer of 1982. This episode took place in the back of a parked van with Defendant's brother, Christopher Rivera, and Plaintiff's sister, Mary Minnich, also present in the van. (N.T. 24, 31-32). Plaintiff denied engaging in sexual relations with anyone other than Defendant during the possible conception period of the child, who was born on May 28, 1983. (N.T. 25).

Defendant first argues that

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dated May 22, 1984 attached to Defendant's attorney's affidavit of service filed August 9, 1984.



Christopher Rivera, Defendant's brother, should have been presented to the jury standing beside Plaintiff and her child after a foundation had been laid as to Christopher being the possible father of the child. This foundation according to Defendant consisted of testimony by Christopher Rivera that he violated an Order of this Court dated April 16, 1984 by refusing to submit to HLA blood tests and Defendant's testimony that Plaintiff wanted to have sexual intercourse with Christopher and that she was alone with him in the back of the van for a short period of time. (N.T. 51, 52, 59-61).<sup>2</sup>

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<sup>2</sup>After the pretrial conference held April 12, 1984, Defendant's attorney filed a supplemental pretrial

In his testimony, Defendant admitted having sexual relations with Plaintiff on the night in question, and also stated that no one else had sex with Plaintiff. Defendant did testify that at one point Christopher and Plaintiff were alone in the back of the van for approximately five to ten minutes. Defendant acknowledged that he could not definitely say that the two of them had

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memorandum on April 13, 1984 listing two additional witnesses. This memorandum stated: "A. Chris Rivera, brother of Gregory Rivera, will testify that he had sexual relations with the Plaintiff on the same night in which Gregory Rivera had sex with her."

engaged in sexual intercourse.

(N.T. 59-61). Plaintiff denied sexual relations with anyone other than Defendant during the relevant period of conception, and she specifically denied having sex with Christopher on the same night she had sex with Defendant.

(N.T. 32-33). Plaintiff's sister, Mary Minnich, who was also present in the van that night, stated that nothing occurred between Plaintiff and Defendant's brother in the back of the van.

(N.T. 45).

Defendant claims he was harmed because the jury was prevented from considering relevant and material evidence in the form of Christopher

Rivera standing beside Plaintiff and her child. The Court disagrees. A proper foundation for the introduction of this evidence was not established. No witness, including Defendant himself, offered any testimony that Plaintiff had engaged in sexual intercourse with Christopher Rivera. In view of this, the Court properly excluded the presentation of this evidence to the jury.

Defendant next contends that the jury should have been instructed as to the legal effect of a determination by them that Christopher Rivera and Plaintiff had indeed engaged in sexual intercourse during the time of possible

conception. Defendant asserts that sufficient evidence, even without the presentation to the jury of Christopher beside Plaintiff and her child, existed to allow the jury to consider whether Plaintiff had sexual relations with Christopher Rivera.

The Court finds this argument totally devoid of merit. As discussed earlier, no evidence was presented at trial from which the jury could conclude that Plaintiff had sex with anyone other than Defendant. Accordingly, it was not error for the Court to refuse Defendant's request for a charge to the jury concerning the legal effect of Plaintiff having had sexual relations

with anyone other than Defendant.

The procedure governing the commencement of support actions in Pennsylvania is set forth at 42 Pa. C.S.A. §6704.<sup>3</sup> Section 6704(g) states that at a trial for paternity "[t]he burden of proof shall be by a preponderance of the evidence." At the close of the testimony at the trial, Defendant's request that the burden of proof be set at a "clear and convincing evidence" standard was denied.

Defendant's final argument is that the due process requirements of both the

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<sup>3</sup>Act of April 28, 1978, P.L. 202, No. 53, §10(88), as amended, Act of October 5, 1980, P.L. 693, No. 42, §207(a). Subsections (a) to (d) of 42 Pa. C.S.A. §6704, insofar as they



United States Constitution and the Pennsylvania Constitution mandate that a determination of paternity be made using a clear and convincing standard of proof, rather than a mere preponderance of the evidence standard.

The analysis of Defendant's argument must begin with the strong presumption of constitutionality of an Act of the General Assembly and the heavy burden of persuasion upon one who challenges the constitutionality of a statute. Snider v. Thornburgh, 496 Pa. 159, 166 (1981).

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apply to the practice and procedure in an action for support, have been superceded. Pa. R.C.P. 1910.31(4).

As such, unless a legislative enactment "clearly, palpably and plainly" violates the constitution, it will not be declared unconstitutional. Snider, supra; Tosto v. Pennsylvania Nursing Home Loan Agency, 460 Pa. 1, 16 (1975); Daly v. Hemphill, 411 Pa. 263, 271 (1963).

The Fourteenth Amendment to the United States Constitution provides, in part, that "[n]o state shall . . . deprive any person of life, liberty or property, without due process of law."<sup>4</sup> Due process is not a static, rigid

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<sup>4</sup>Although Defendant's brief raises a due process claim under the Pennsylvania Constitution, it appears to rely only on the Federal Constitution. Accordingly, the

concept, but is flexible and calls for such procedural protections as the situation warrants to ensure fundamental fairness. Morrissey v. Brewer, 408 U.S. 471 (1972).

This is a case of first impression in this Commonwealth, so this Court is without guidance in determining whether due process is violated when an adjudication of paternity is made using a preponderance of the evidence standard of proof as stated in the statute. This Court believes that the creation of a

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Court's analysis of the burden of proof issue presented will focus on federal law only.

parent-child relationship is an example of the kind of situation which warrants a flexible application of due process.

In Pennsylvania, paternity actions were once governed by criminal law.<sup>5</sup> A defendant contesting paternity had the choice of proceeding in a civil action using a preponderance of the evidence standard or proceeding in a criminal action employing a beyond a reasonable doubt standard.<sup>6</sup> This choice was

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<sup>5</sup>See: Wilful separation or non-support, 18 P.S. §4731, Act of June 24, 1939, P.L. 872, §731, Act of July 5, 1957, P.L. 481, §1; Neglect to support a bastard, 18 Pa. C.S.A. §4323, Act of December 6, 1972, P.L. No. 1482, No. 334, §1.

<sup>6</sup>Act of July 13, 1953, P.L. 431, as amended, Act of August 14, 1963, P.L. 872, 62 P.S. §2043.31 et seq.

removed, however, when the Pennsylvania Legislature decided that all determinations of paternity would be civil actions and the burden of proof would be by a preponderance of the evidence. 42 Pa. C.S.A. §6704(g). The civil/criminal distinction is of no importance in determining what standard of proof is constitutionally required. That distinction has been discarded, and the focus is now on the nature of the threatened deprivation. See: In re

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See: Commonwealth ex rel. Johnson v. Peake, 272 Pa. Super. 340 (1979); Armstrong v. Dandridge, 257 Pa. Super. 415, Commonwealth v. Dillworth, 431 Pa. 479 (1968).

Gault, 387 U.S. 1 (1967).

Resolution of the issue of whether the preponderance of the evidence standard of proof in a paternity action is constitutionally sufficient requires analysis of the governmental and private interests affected in this adjudication. In Mathews v. Eldridge, 424 U.S. 319 (1976), the United States Supreme Court outlined three distinct factors to be balanced when identifying the specific requirements of due process. These factors are:

" . . . first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including



the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail." 424 U.S. at 335.

The first factor - the private interests of a defendant in a paternity action - weighs heavily in favor of the higher standard of proof of clear and convincing evidence. Clearly, a defendant's familial interests are affected by a paternity determination. A parent's right to "the companionship, care, custody and management of his or her children" has been held to be an important protectible interest.

Lassiter v. Dept. of Social Services, 452 U.S. 18, 27 (1981), quoting Stanley v. Illinois, 405 U.S. 645, 651 (1972).

Because that interest is so substantial, the Supreme Court in Lassiter held that "a parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one". Lassiter, 452 U.S. at 27.

The creation of a parent-child relationship involves important and protectible familial interests just as the termination of a parent-child relationship does. The imposition of parental obligations demands procedural fairness. The United States Supreme Court recognized this in Little v. Streater, 452 U.S. 1 (1981), when it held that due process requires that a

state must provide indigent putative fathers with blood tests where the statute required that the costs of such tests be charged against the requesting party. The protectible interests of the putative father in a paternity action were also acknowledged by the Pennsylvania Superior Court when it held in Corra v. Coll, 305 Pa. Super. 179 (1982), that indigent defendants in a civil paternity action have a due process right to appointed counsel.

A putative father contesting paternity also has significant liberty interests at stake. Once paternity is established res judicata applies, and this finding cannot be relitigated.

Norris v. Beck, 282 Pa. Super. 420 (1980). A putative father's physical liberty may also be in jeopardy. If paternity is established and a support order is entered, a defendant who wilfully refuses to comply with this order, when he has the financial resources to do so, faces possible incarceration. 18 Pa. C.S.A. §4324 (up to 90 days imprisonment).

In addition, a defendant found to be a father has property interests that will be affected. The wages, salary or commissions of a person owing support may be attached. Pa. R.C.P. 1910.22. Children born out of wedlock may have rights to their natural father's estate,

20 P.S. §§2107(d), 2514(8), 3538, 6114(5), and to his worker's compensation benefits, 77 P.S. §562.

These familial, liberty and property interests of a defendant in a civil paternity action are significant enough that they alone justify imposing a clear and convincing standard of proof. The Court still must evaluate the remaining two Mathews elements, however, to determine whether they shift the due process balance away from granting putative fathers this additional protection.

The next factor to be considered is the risk that a paternity adjudication with a burden of proof of by a

preponderance of the evidence will lead to an erroneous determination of paternity. In paternity hearings, numerous factors combine to increase the risk of erroneous factfinding. In these trials, the testimony of a party is often of questionable reliability, and there are seldom accurate or reliable eyewitnesses. Increasing the burden of proof is one way to impress the factfinder with the importance of the decision and may reduce the chance that an erroneous determination of paternity will occur. See: Addington v. Texas, 441 U.S. 418 (1979). In Little, supra, the Supreme Court found that access to blood tests by indigent putative fathers

would help ensure that a correct decision would be reached. More recently, the Pennsylvania Superior Court in Corra, supra, found that access to blood tests was not enough protection against erroneous determinations and decided that counsel is needed to ensure that the defendant is informed of his right to request blood tests and to inform him of their significance. To require a clear and convincing standard of proof is even a better procedure for safeguarding against erroneous determinations of paternity.

Additional support for increasing the standard of proof applicable to paternity hearings can be found in other

Pennsylvania statutory and decisional law. For example, for purposes of prescribing benefits for children born out of wedlock through their father, clear and convincing proof is required that the man was the father of the child. 48 P.S. §167(b)(3). Similarly, in order for a child born out of wedlock to have rights in his father's estate, there must be clear and convincing evidence of the father's paternity. 20 Pa. C.S.A. §2107(c)(3). In both of these situations, a prior court determination of paternity is sufficient to meet the clear and convincing standard. The resulting anomaly is that a paternity adjudication where the



standard of proof was only by the preponderance of the evidence can then be used to satisfy the higher standard of proof necessary for proving paternity in these situations.

The clear and convincing standard of proof is employed in many different types of civil actions in Pennsylvania. Clear and convincing evidence is required to prove, among other things: title by adverse possession, Stevenson v. Stine, 412 Pa. 478 (1963); a claim for wages for personal service to a decedent, Mooney's Estate, 328 Pa. 273 (1937); fraud, Gilberti v. Coraopolis Trust Company, 342 Pa. 161 (1941); and facts necessary to overcome the

presumption of a gift, Butler v. Butler, 464 Pa. 522 (1975).

The Supreme Court in Santosky v. Kramer, 455 U.S. 745 (1982), reviewed New York's procedure for termination of parental rights and held that the preponderance of the evidence test violated due process. The Supreme Court stated that the intermediate standard of proof of clear and convincing evidence is mandated when the individual interests at stake are both "particularly important" and "more substantial than mere loss of money". 455 U.S. at 756. This Court believes that an adjudication of paternity is a situation demanding this intermediate

standard of proof.

The final consideration is the government interest involved in a paternity action and the administrative and fiscal burdens a higher burden of proof would entail. The primary interest of the state is that a just and accurate decision be reached. Lassiter, supra, 452 U.S. at 27. Therefore, not only the putative father's interest but also the state's interest is best served when the determination of paternity is made under a clear and convincing standard, rather than by a mere preponderance of the evidence. Since an accurate determination of paternity increases the likelihood that the

adjudged father will comply with his support obligations, the state's future administrative burdens will be lessened. The state will incur no added expense by the imposition of the higher standard of proof at a paternity hearing; unlike, for example, a constitutional requirement of court-appointed counsel.

Our conclusion is that in paternity determination proceedings, the private interests affected are substantial; the risk of error from using a preponderance of the evidence standard is considerable; and the countervailing state interest favoring that standard is minimal. Accordingly, the Court finds that due process requires that the

burden of proof at a paternity trial be by clear and convincing evidence and that Section 6704(g) is unconstitutional by requiring the burden of proof to be by a preponderance of the evidence.

O R D E R

AND NOW, October 19, 1984,  
Defendant's Motion for a New Trial is granted. The Domestic Relations Office is directed to send a copy of this Opinion and Order to LeRoy S. Zimmerman, Attorney General of Pennsylvania, 16th Floor, Strawberry Square, Harrisburg,

Pennsylvania 17120.

BY THE COURT:

PAUL A. MUELLER, JR.  
JUDGE

Copies to:  
Mary Louise Barton, Assistant  
District Attorney  
William Watt Campbell, Esquire

SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

JEAN MARIE MINNICH,  
Appellant

:

No. 161 E.D.  
: Appeal Docket,  
1984

vs.

:

GREGORY L. RIVERA,  
Appellee

:

:

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now  
here ordered and adjudged by this Court  
that the ORDER of the COURT of COMMON  
PLEAS, of LANCASTER COUNTY, be and the  
same is hereby REVERSED and this case is  
REMANDED for proceedings consistent with  
this opinion.

BY THE COURT:

Marlene F. Lachman, Esq.  
Prothonotary

Dated: MARCH 21, 1986

Appendix "C"





applicable to civil trials--proof by a preponderance of the evidence. Section 6704(d) provides:

Trial of Paternity - Where the paternity of a child, born out of wedlock is disputed, the determination of paternity shall be made by the court without a jury unless either party demands trial by jury. The trial, whether or not a trial by jury is demanded, shall be a civil trial and there shall be no right to a criminal trial on the issue of paternity. The burden of proof shall be by a preponderance of the evidence. (Emphasis supplied).

42 Pa.C.S.A § 6704(d).

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the alleged father upon the complaint of the mother. The Commonwealth's burden was to prove beyond a reasonable doubt an act of intercourse between the prosecutrix-mother and the putative father, and the conception of a child as a result of that act. See Commonwealth v. Rankin, 226 Pa. Super 37, 311 A.2d 660 (1973).

On May 28, 1983, the appellant, Jean Marie Minnich, gave birth to a baby boy, Cory Michael Minnich. Approximately three weeks later, on June 17, 1983, appellant filed a complaint in the domestic relations division of the Common Pleas Court of Lancaster County seeking support for her son from the appellee, Gregory L. Rivera, alleged to be the father of the newly born infant. Appellee denied paternity and a trial on that issue was held before a jury on April 24, 1984. The jury returned a verdict in favor of appellant and against appellee finding that the appellee, Gregory L. Rivera, was the father of Cory Michael Minnich.

Prior to the start of the trial, the appellee moved the court that the burden of proof as set forth in 42 Pa.C.S.A. 6704(d) -- proof by a preponderance of the evidence -- offends the due process clause of the 14th Amendment to the United States Constitution.<sup>2</sup> Appellee argued that due process requires that the burden of proof in paternity cases be proof by clear and convincing evidence. He requested that the jury be so charged. The trial judge denied appellee's motion and refused to charge on the heightened burden of proof. The court instructed the jury in accordance

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<sup>2</sup>The lower court noted that although the appellee, in his brief, raised a due process issue under the Pennsylvania Constitution, in his argument he

with 42 Pa.C.S.A. § 6704(d) that the burden of proof in establishing paternity is proof by a preponderance of the evidence.

Following the verdict against him, the appellee filed post-trial motions arguing that the trial court had erred in refusing to impose the clear and

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appeared to rely exclusively on the Federal Constitution. Hence, the lower court's decision focused on the 14th Amendment. Similarly, in this Court, the appellee's brief raises a claim under Article I, Section 1 of the Pennsylvania Constitution but the arguments of both parties concentrate on the Federal Constitution. Accordingly, we have focused our analysis on 14th Amendment requirements. Nevertheless, what we say here is equally applicable to due process concerns of the Pennsylvania Constitution.



convincing evidence standard to the issue of paternity and in charging the jury on the preponderance standard. The lower court reversed itself holding that due process requires that the burden of proof in a paternity case be by clear and convincing evidence. The court held that 42 Pa.C.S.A. 6704(d) requiring only proof by a preponderance of the evidence is unconstitutional and ordered a new trial. From the lower court's holding and order, this appeal followed.<sup>3</sup>

At the outset, we begin our consideration of the issue here with the strong presumption that enactments of

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<sup>3</sup>This is a direct appeal to this court under 42 Pa.C.S.A. § 722(7) which provides:

the legislature are constitutional and he who challenges the constitutionality of an act of assembly carries a heavy burden of proof. Commonwealth v. Mikulan, \_\_\_\_ Pa. \_\_\_\_, 470 A.2d 1339 (1983). Snider v. Thornburgh, 496 Pa.

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The Supreme Court shall have exclusive jurisdiction of appeals from final orders of the courts of common pleas in the following classes of cases:

(7) Matters where the court of common pleas had held invalid as repugnant to the Constitution, treaties or laws of the United States, or to the Constitution of this Commonwealth, any treaty or law of the United States or any provision of the Constitution of, or of any statute of, this Commonwealth, or any provision of any home rule charter.

159, 436 A.2d 593 (1981). National Wood Preserves v. Commonwealth, 489 Pa. 221, \_\_\_\_ A.2d \_\_\_\_ (1980).

"It is an elementary principle of statutory construction, which this Court has affirmed on numerous occasions, that 'an Act may not be declared unconstitutional unless it violates the constitution clearly, palpably, plainly and in such manner as to leave no doubt or hesitation in our minds.'" (citation omitted) Absentee Ballots Case No. 1, 431 Pa.

165, 169, \_\_\_\_ A.2d \_\_\_\_, \_\_\_\_ (1968).

The statute in question here -- 42 Pa.C.S.A. § 6704(d) -- mandates that paternity trials be civil proceedings as opposed to criminal, and the burden of proof be the standard usually applied to civil trials -- proof by a preponderance of the evidence. It is within the

province of the legislature to prescribe a standard of proof applicable to particular actions and proceedings so long as the standard announced meets minimum due process requirements. See: Commonwealth v. Wright, \_\_\_\_ Pa. \_\_\_\_, \_\_\_\_ A.2d \_\_\_\_ (1985). The appellant argues that the lower court erred in declaring that the preponderance standard set by the legislature failed to meet minimum due process requirements and was, therefore, unconstitutional. We agree with appellant that the lower court did err and now reverse.

The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to "instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of

factual conclusions for a particular type of adjudication." In re Winship, 397 U.S. 358, 370, 90 S.Ct. 1068, 1076, 25 L.Ed.2d 368 (1970) (Harlan, J., concurring). The standard serves to allocate the risk or error between the litigants and to indicate the relative importance attached to the ultimate decision.

Commonwealth v. Wright, \_\_\_\_ Pa. \_\_\_\_, \_\_\_\_ A.2d \_\_\_\_ (concurring opinion by Larsen, J.) in which the majority joins, citing Addington v. Texas, 441 U.S. 418, 423 (1979).

In weighing the standard of proof that should apply in paternity trials, it is incumbent upon us to: (1) appraise the interest of the individual alleged to be the father along with the interests of the child and the mother; (2) assess the Commonwealth's interest

in family matters and in establishing paternity under a particular standard of proof; and (3) consider the risk that those interests may be erroneously deprived because of the standard applied. See Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893 (1976). Also see Stantosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388 (1982).

The person alleged to be father has a legitimate interest in not being declared the father of a child he had no hand in bringing into the world. It is important to him that he not be required to provide support and direct financial assistance to one not his child. There is a legitimate concern on his part with

not having a stranger declared his legal heir thereby giving that stranger potential interests, inter alia, in his estate,<sup>4</sup> and Social Security Benefits.<sup>5</sup> He has an interest in not being responsible for the health, welfare and education of a child not his own.

The child born out of wedlock, on the other hand, has an interest in knowing his father and in having two parents to provide and care for him. The child's concerns include a known belonging to a certain line of descent

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<sup>4</sup>See Probate, Estates and Fiduciaries Code, 20 Pa.C.S.A. § 2101, et seq.

<sup>5</sup>See 42 U.S.C. § 402.

with knowledge of any benefits or detriments inheritable from that line. Further, the child is entitled to financial assistance from each parent able to provide such support.

The mother has an interest in receiving from the child's natural father help, financial and otherwise, in raising and caring for the child born out of wedlock. She has an interest in seeing that her child has two responsible parents.

The Commonwealth has an interest in its infant citizens having two parents to provide and care for them. There is a legitimate interest in not furnishing financial assistance for children who



have a father capable of support. The Commonwealth is concerned in having a father responsible for a child born out of wedlock. This not only tends to reduce the welfare burden by keeping minor children, who have a financially able parent, off the rolls, but it also provides an identifiable father from whom potential recovery may be had of welfare payments which are paid to support the child born out of wedlock.

Considering the respective interests of the parties, the burden of proof by a preponderance of the evidence which requires the litigants to share the risk of error in "roughly equal fashion," Addington v. Texas, supra at 423,

satisfies the minimum requirements of due process. In the typical case, the alleged father has had sexual relations with the mother and it is the mother's contention that those relations resulted in conception and the birth of a child. The putative father denies paternity and demands a trial to determine that issue. The trial must be procedurally fair, and to that end the Commonwealth must provide indigent putative fathers with blood tests without charge, Little v. Streater, 452 U.S. 1 (1981), and alleged fathers who are indigent have a right to appointed counsel in paternity actions, Corra v. Coll, 305 Pa.Super 179, \_\_\_\_ A.2d \_\_\_\_ (1979). These procedural

safeguards work to keep the risk of error between the litigants on a close to even footing.

Generally, those cases where clear and convincing evidence is the standard of proof, the moving party is seeking: (A) to diminish or terminate another's rights: In Re T.R., a minor, Appeal of P.A.R., \_\_\_\_ Pa. \_\_\_\_, 465 A.2d 642 (1983); Santosky v. Kramer, supra (involuntary termination of parental rights); Stevenson v. Stein, 412 Pa. 478, \_\_\_\_ A.2d \_\_\_\_ (1963)(title by adverse possession); Woodby v. INS, 385 U.S. 276, 87 S.Ct. 483 (1966) (deportation); Chaunt v. United States, 364 U.S. 350, 81 S.Ct. 147 (1960)

(denaturalization); Addington v. Texas, supra (involuntary civil commitment proceedings) See also Hale v. Sterling, 369 Pa. 336, 85 A.2d 849 (1952)(action to establish a resulting trust in real estate) and Elliott v. Clausen, 416 Pa. 34, 204 A.2d 272 (1984)(action to set aside a transaction on the basis of mental incompetency); (B) to prove fraud; Murdoch v. Murdoch, 418 Pa. 219, 210 A.2d 490 (1965)(attempt to set aside a settlement based on fraud); (C) to rebut the strong presumption of legitimacy; Connell v. Connell, \_\_\_\_ Pa. Super \_\_\_\_, 477 A.2d 872 (1984)(attempt by husband to overcome presumption of legitimacy of a child born during

marriage and while he was living with his wife; and (D) to attempt to establish rights against a decedent's estate based upon an act or acts of the decedent during his lifetime; see Estate of Pitone, 489 Pa. 60, 413 A.2d 1012 (1980)(attempt to establish an inter vivos gift by decedent against decedent's estate). See also Estate of Reichel, 484 Pa. 610, 400 A.2d 1268 (1979), Beniger Estate, 449 Pa. 373, 296 A.2d 773 (1972), and Mooney's Estate, 328 Pa. 273, 194 A.2d 893 (1937).

A paternity trial does not resemble any of the above actions which require a heightened standard of proof. In a paternity suit the plaintiff or

complainant does not seek to terminate another's rights. The mother is not asking the court to strip the putative father of previously held rights. There are no allegations of fraud at issue nor is there an attempt to gain rights against a decedent's estate. Further, the complainant is not faced with the considerable burden of overcoming a strong presumption. In a paternity action, the plaintiff's primary aim is to establish and enforce the rights of the child born out of wedlock. The rights of the child are central to the suit and considerations of fairness and risk of error allocation are quite different than those traditionally

requiring the clear and convincing evidence standard.

In those jurisdictions where paternity proceedings are regarded civil in nature, as they are in Pennsylvania, the general rule is that the burden of proof of paternity is by a preponderance of the evidence. See 10 Am Jur 2nd 922 and 10 C.J.S., Bastards § 95. A majority of the courts which have considered the quantum of evidence issue in the "civil trial" jurisdictions, have affirmed the preponderance standard. See McFadden v. Griffith, 278 Ark. 460, 647 S.W. 2d 432 (1983); Walsh v. Palma, 154 Cal. App. 3rd 290, 201 Cal. Rptr. 142 (1984); Terasi v. Andrews, 3 Conn.

Cir.Ct. 449, 217 A.2d 75 (1965); People Ex Rel. Cizek v. Assarilo, 81 Ill. App. 3rd 1102, 37 Ill. Dec. 84, 401 N.E. 2d 311; Spears v. Veasley, 34 N.W. 2d 185 (1948); Dorsey v. English, 283 Md. 522, 390 A.2d 1133 (1978); Snay v. Snarr, 195 Neb. 375, 238 N.W. 2d 234; State (F) v. M, 96 N.J. Super. 335, 233 A.2d 65 (1967); Leach v. State, 398 P.2d 848 (1965); In Re F.J.F., 312 N.W. 2d 718 (1981); and Frazier v. McFerren, 55 Tenn. App. 431, 402 S.W. 2d 467 (1964). The standard of proof called for by 42 Pa.C.S.A. § 6704(d) is in accord with the general rule.

The respective interests of the putative father, the child and the



mother are clear. Also clear is the interest of the Commonwealth in seeing that fathers support their children who are born out of wedlock so that those children do not become public charges. The standard of proof must be one that recognizes these interests and does not unduly risk the erroneous deprivation of any of them. On balance, the preponderance standard meets these demands and satisfies the requirements of due process. The order of the Common Pleas Court of Lancaster County is reversed and this case is remanded for proceedings consistent with this opinion.

J-151-23

Mr. Chief Justice Nix filed a dissenting opinion.

J-151-24

[J-151-1985]  
IN THE SUPREME COURT OF PENNSYLVANIA  
EASTERN DISTRICT

JEAN MARIE MINNICH, : No. 161 E.D.  
: Appeal Docket 1984  
Appellant :  
: Appeal from  
v. : Judgment of the  
: Court of Common  
GREGORY L. RIVERA, : Pleas of Lancaster  
: County,  
Appellee : Pennsylvania,  
: Domestic Relations  
: Division  
: No. 1435 of 1983  
:  
: ARGUED: OCTOBER  
: 22, 1985

DISSENTING OPINION

NIX, C. J. FILED: MARCH 21, 1986

Notwithstanding the heavy burden of  
proof demanded to sustain a  
constitutional challenge to an act of  
the General Assembly, it is my

considered opinion that the trial court was correct in concluding that due process requires that paternity be established by clear and convincing evidence. The preponderance standard specified by section 6704(g) of the Judicial Code, 42 Pa. C.S. §6704(g), is therefore unconstitutional.

The function of a standard of proof is "'to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication.'"

Addington v. Texas, 441 U.S. 418, 423 (1979), quoting In re Winship, 397 U.S. 358, 370 (1970) (Harlan, J.,

concurring). The United States Supreme Court has identified three factors which must be balanced in determining the standard of proof required by due process in a particular type of proceeding:

[F]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews v. Eldridge, 424 U.S. 319, 335 (1976) (citation omitted).

The private interests of the putative father in a paternity action

are of considerable importance. These interests were cogently described by the United States Supreme Court in Little v. Streater, 452 U.S. 1 (1981):

The private interests implicated here are substantial. Apart from the putative father's pecuniary interest in avoiding a substantial support obligation and liberty interest threatened by the possible sanctions for noncompliance, at issue is the creation of a parent-child relationship. This Court frequently has stressed the importance of familial bonds, whether or not legitimized by marriage, and accorded them constitutional protection. See Stanley v. Illinois, 405 US 645, 651-652, 31 L. Ed. 2d 551, 92 S. Ct. 1208 (1972). Just as the termination of such bonds demands procedural fairness, see Lassiter v. Department of Social Services, post, p. 18, 68 L. Ed. 2d 640, 101 S. Ct. 2153 (1981), so too does their imposition. Through the judicial process, the State properly endeavors to identify the father of a child born out of wedlock and to make him responsible for the child's

maintenance. Obviously, both the child and the defendant in a paternity action have a compelling interest in the accuracy of such a determination.

Id. at 13 (footnote omitted).

The second factor, the risk of an erroneous decision, also militates in favor of a heightened standard of proof. The testimony offered by the parties in a paternity suit is often of questionable reliability and the availability of eyewitnesses is unlikely. See, e.g., Little v. Streater, supra at 14.

The final factor to be considered is the government's interest in the standard of proof to be selected. The state shares the interest of the child



and the putative father in a just and accurate determination. See Little v. Streater, supra at 14; Lassiter v. Department of Social Services, 452 U.S. 18, 27 (1981). Moreover, the imposition of a more stringent standard of proof entails no additional time or expense to the government.

From the foregoing it is clear that the use of the preponderance standard in paternity proceedings does not satisfy the requirements of due process. The preponderance standard is the least demanding standard known to the law. Commonwealth v. Ehredt, 485 Pa. 191, 401 A.2d 358 (1979); Commonwealth v. Mitchell, 472 Pa. 553, 372 A.2d 826

(1977); Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). To satisfy that standard the party bearing the burden need only present evidence which outweighs the opposing evidence in probative value. Se-Ling Hosiery, Inc. v. Margulies, supra. In contrast a "clear and convincing evidence" standard requires that

[T]he witnesses must be found to be credible, that the facts to which they testify are distinctly remembered and the details thereof narrated exactly and in due order, and that their testimony is so clear, direct, weighty, and convincing as to enable the jury to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue.... It is not necessary that the evidence be uncontradicted..., provided it "carries a clear conviction to the mind"...or carries "a clear conviction of its truth....."

In re Estate of Fickert, 461 Pa.  
653, 658, 337 A.2d 592, 594 (1975)  
quoting La Rocca Trust, 411 Pa.  
633, 640, 192 A.2d 409, 413 (1963).

See also Thomas v. Seaman, 451 Pa.  
347, 304 A.2d 134 (1973); Broida v.  
Travelers Insurance Co., 316 Pa. 444,  
175 A.2d 492 (1934).

The "clear and convincing evidence"  
standard is required in Pennsylvania to  
prove a number of types of claims in  
civil actions. See, e.g., Butler v.  
Butler, 464 Pa. 522, 347 A.2d 477 (1975)  
(facts necessary to overcome presumption  
of gift); Elliot v. Clausen, 416 Pa. 34,  
204 A.2d 272 (1964) (incompetency  
sufficient to rescind transaction);  
Stevenson v. Stine, 412 Pa. 478, 195

A.2d 268 (1963) (title by adverse  
possession); Hale v. Sterling, 369 Pa.  
336, 85 A.2d 849 (1952) (resulting  
trust); Gilberti v. Coraopolis Trust  
Co., 342 Pa. 161, 19 A.2d 408 (1941)  
(fraud); Mooney's Estate, 328 Pa. 273,  
194 A. 893 (1937) (wages owed by  
decedent for personal service);  
Boyertown National Bank v. Hartman, 147  
Pa. 558, 23 A. 842 (1892) (reformation  
of contract on grounds of mistake);  
McKenna v. McKenna, 282 Pa. super. 45,  
422 A.2d 668 (1980) (change of  
domicile).

Paternity is at least as if not more  
fundamental than the above-enumerated  
subjects. Most compelling is the United

States Supreme Court's recent ruling in Santosky v. Kramer, 455 U.S. 745 (1982), which held that clear and convincing evidence must be presented in order to terminate the parental relationship. It would appear that that issue and the issue with which we are here faced are on equal footing. The individual rights affected by the creation of a parental relationship are as significant as the rights affected by the extinguishment of that relationship. I would hold that the same quality of evidence should be required to create that relationship as to destroy it. I therefore dissent.

[J-151-1985]-10-

IN THE COURT OF COMMON PLEAS OF  
LANCASTER COUNTY, PENNSYLVANIA  
D O M E S T I C

JEAN MARIE MINNICH :  
vs. : No. 1435 of 1983  
GREGORY L. RIVERA : Paternity

M O T I O N

1. The issue in this action is the paternity of Plaintiff's child, Cory Minnich.

2. Plaintiff's burden of proof is established by 42 Pa. C.S. §6704(g) as proof by a "preponderance of the evidence."

3. Defendant avers that the statutory burden of proof offends the Due Process doctrine under Article One, Section One of the Pennsylvania Constitution and the Due Process clause

Appendix "D"

of the fourteenth amendment to the United States Constitution.

4. Defendant avers that Due Process requires that the burden of proof be proof by "clear and convincing evidence" and that the factfinder must be charged accordingly.

WHEREFORE, Defendant moves this Honorable Court to:

a. find that 42 Pa. C.S. §6704(g) is unconstitutional in imposing a burden of proof by a "preponderance of the evidence;"

b. find that Due Process, both on the basis of the Pennsylvania and the United States Constitution, requires the imposition of a burden of proof by clear and convincing evidence;

c. instruct the factfinder accordingly.

Respectfully submitted,

William Watt Campbell  
Suite 315  
53 North Duke Street  
Lancaster, PA 17602  
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing upon Mary Louise Barton by leaving a copy at her office on April 13, 1984.

William Watt Campbell



IN THE COURT OF COMMON PLEAS OF  
LANCASTER COUNTY, PENNSYLVANIA  
DOMESTIC RELATIONS DIVISION

JEAN MARIE MINNICH :  
: No. 1435 of 1983  
vs. :  
: Paternity  
GREGORY L. RIVERA :

MOTION FOR NEW TRIAL

Defendant Gregory Rivera moves the Court for a new trial in this action and as grounds sets forth the following:

1. After a jury trial before the Honorable Paul A. Mueller, Jr., on April 24, 1984, a verdict was returned against Defendant, finding him to be the father of Plaintiff's child.

2. Defendant filed a pre-trial motion seeking a finding that 42 Pa. C.S. §6704(g) is unconstitutional in that it imposes a burden of proof by a

## Appendix "E"

preponderance of the evidence, a finding that the Pennsylvania and Federal Constitutions require proof by clear and convincing evidence in a paternity case, and a finding that the jury should be instructed accordingly. The Defendant alleged specifically that the Due Process requirements of the two constitutions are not met by the preponderance standard. The Court denied Defendant's motion prior to charging the jury. Defendant alleges that this was error.

3. The Court erred in refusing to give Defendant's Instruction Number 2, filed at time of trial, to which refusal Defendant timely excepted. The refusal to give this Instruction prejudiced the right of Defendant to a trial consistent

with Due Process requirements as to burden of proof. Defendant's Instruction Number 2 is incorporated herein by reference.

4. The Court erred in denying Defendant the opportunity to show to the jury Chris Rivera standing beside the Plaintiff and her child. Defendant was harmed thereby in that the jury was prevented from considering relevant and material evidence for which a proper foundation had been made.

5. The Court erred in refusing to give Defendant's Instruction Number 3, filed at time of trial, to which refusal Defendant timely excepted. Defendant's Instruction Number 3 is incorporated herein by reference. The Defendant was prejudiced thereby and that the jury was

not instructed as to the legal effect of  
a factual decision by them that  
Plaintiff had had sex with Chris  
Rivera.

WHEREFORE, Defendant moves the Court  
to grant him a new trial.

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WILLIAM WATT CAMPBELL  
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF  
LANCASTER COUNTY, PENNSYLVANIA  
DOMESTIC RELATIONS DIVISION

JEAN MARIE MINNICH :  
                              : No. 1435 of 1983  
                              : vs. :  
                              : Paternity  
GREGORY L. RIVERA :

O R D E R

AND NOW, this                day of May  
1984, Defendant having filed a Motion  
for a New Trial, the Court orders the  
Court Reporter to transcribe the  
following portions of the record in this  
action:

BY THE COURT:

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J.

IN THE SUPREME COURT OF THE UNITED STATES

Term, 1986

No.

JEAN MARIE MINNICH,  
Appellee

vs.

GREGORY L. RIVERA,  
Appellant

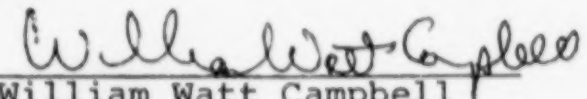
CERTIFICATE OF SERVICE

I hereby certify that on this 17<sup>th</sup>  
day of June, 1986, pursuant to  
Rule 28.3 of the Rules of the Supreme  
Court of the United States, I served  
counsel for Jean Marie Minnich by  
personal service at her office at 50  
North Duke Street, Lancaster, PA 17602.

28 U.S.C. §2403(b) may be applicable.  
Pursuant to Rule 28.4(c) of the Rules of  
the Supreme Court, I have served three  
copies of this document by first class  
mail, postage prepaid on June 17,  
1986, on LeRoy S. Zimmerman, Attorney



General of the Commonwealth of  
Pennsylvania, 16th Floor, Strawberry  
Square, Harrisburg, PA 17120.

  
William Watt Campbell  
Suite 305  
53 North Duke Street  
Lancaster, PA 17602